



THE FIRM OF KARL F ROSS
5676 RIVERDALE AVENUE
PO BOX 900
RIVERDALE (BRONX) NY 10471-0900

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In re Application of
Wolfgang Krah
Application No. 10/660,372
Filed: September 11, 2003
Atty's Docket No. 22580

**OFFICE OF PETITIONS
ON PETITION**

This is a decision on the paper entitled "Completion of Filing Requirements" filed January 22, 2004, which is treated as a petition under 37 CFR 1.53(e), in response to the Notice To File Missing Parts mailed December 5, 2003.

The petition is **DISMISSED**.

The application was filed September 11, 2003. However, on December 5, 2003, the Office of Initial Patent Examination mailed a Notice To File Missing Parts noting that the filing fee and oath or declaration were missing. Receipt of the filing fees and the oath or declaration have been submitted but, the Notice also indicated that while the application had been accorded a filing date of September 11, 2003, that Figures 7-11 described in the specification appeared to have been omitted.

The mailing of a "Notice of Omitted Items" permits the applicant to either: (1) promptly establish prior receipt in the PTO of the drawing(s) at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the missing drawings were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted drawings in a nonprovisional application and accept the date of such submission as the application filing date must file any omitted drawing(s) with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such drawing(s) and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the "Notice of Omitted Items" (37 CFR 1.181(f)).

In this case, petitioners neither assert that the missing figures were deposited on September 11, 2003 nor request the January 22, 2004 (the date the missing page was supplied) filing date. Rather, petitioners have simply supplied a new set of drawings sheets which includes Figures 1-11.

Even though the petition is inappropriate and is subject to dismissal, a petition fee in the amount of \$130.00 is still required. Accordingly, per petitioner's authorization, deposit account no. 18-2025 will be charged in the amount of \$130.00 for the petition fee.

Petitioners should either provide evidence that Figures 7-11 were filed on September 11, 2003 (i.e., with an itemized postcard receipt in accordance with MPEP 503) or state on renewed petition that petitioners desire to accept the application, including Figures 7-11, with a filing date of January 22, 2004. Alternatively, petitioners may submit Figures 7-11 as a preliminary amendment. If Figures 7-11 are submitted as a

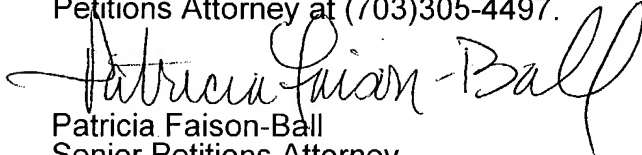
preliminary amendment, it will be reviewed by the examiner for new matter.¹

It is noted that a completely new set of drawings containing Figures 1-11, not just the omitted Figures, were filed with the petition on January 22, 2004. The application will be processed and examined using only the application papers filed on September 11, 2003. The four (4) sheets of drawings containing Figures 1-11 filed on January 22, 2004, will not be used for processing, but will be retained in the application file.

In view of the above, the "Notice" was properly mailed and will not be withdrawn. The present petition was not necessitated by any error on the part of the Office and the \$130.00 petition was required upon filing of the petition. Thus, the \$130.00 petition fee will not be refunded.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of September 11, 2003, using the application papers filed on that date.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703)305-4497.



Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹37 CFR 1.121(b).